

# DOING BUSINESS WITHOUT BRIBERY

TRAINER'S HANDBOOK

**Transparency International (TI)** is the world's leading non-governmental anti-corruption organisation. With more than 100 Chapters worldwide, TI has extensive global expertise and understanding of corruption.

**Transparency International UK (TI-UK)** is the UK chapter of TI. We raise awareness about corruption; advocate legal and regulatory reform at national and international levels; design practical tools for institutions, individuals and companies wishing to combat corruption; and act as a leading centre of anti-corruption expertise in the UK.

**Editor:** Robert Barrington

**Publisher:** Transparency International UK

First published January 2012

Second edition published May 2013

ISBN 978-0-9566194-9-5

### **Acknowledgements**

We would like to thank all those who have contributed their expertise to this project as members of the editorial advisory and review group, and in particular: Julian Glass (FTI Consulting), Vivek Dodd and Catriona Razic (Skillcast), Chandrashekhar Krishnan and Peter Wilkinson.

We are extremely grateful to the following organisations for contributing their expertise and financial and in-kind support for this project:

**FTI Consulting**, a global consultancy offering specialized expertise in the areas of compliance, risk, reputation, liability, performance, finance and information.

**Skillcast**, a global e-learning company with a strong focus on governance, risk and compliance issues.

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# **DOING BUSINESS WITHOUT BRIBERY**

## **ANTI-BRIBERY TRAINING TRAINER'S HANDBOOK**

Transparency International  
May 2013

## About this training course

This training module aims to provide best practice anti-bribery training for companies of all sizes, and other organizations that are at risk of encountering requests for bribes. It is also intended that companies should use the course to benchmark their own training programmes against TI-UK's view of best practice. This Trainer's Handbook is part of a set of complementary training tools produced by TI-UK, that include a powerpoint-based course and an e-learning module.

These are all available free of charge at:

[www.transparency.org.uk/training](http://www.transparency.org.uk/training).

## Learning objectives

By the end of this course, you will be able to:

- Understand what constitutes bribery and the risks facing a company
- Understand the legal framework
- Understand the damage that bribery can do to your own company and to society
- Identify and counter bribery risks and how to respond to bribery demands
- Understand your obligations as an employee or director and how to report concerns, suspicions or breaches related to bribery, or seek advice

## Course contents

- Why countering bribery matters
- What is bribery?
- How bribes are paid
- Scenarios - common bribery challenges
- Scenario – getting through the airport
- Bribery and the law
- Reporting bribery
- Summary

## Why countering bribery matters



How many bribes are paid each year?

More than \$1 trillion is paid globally in bribes each year

(source: World Bank Institute)

That means 1 out of every 30 dollars of GDP in the world is being paid in bribes, and some of the worst affected are the poorer countries.

## Trainer's notes:

Let's start by looking at how significant bribery really is and the impact it has on society and corporations.

These figures from the World Bank indicate that bribery is a very significant global problem. That is why there is so much concern over bribery and why lawmakers are starting to act.'

*'Bribery and corruption are damaging to democratic institutions and the governance of corporations. They discourage investment and distort international competitive conditions.'*

Organisation for Economic Co-operation and Development (OECD)

More details from the World Bank statistics:

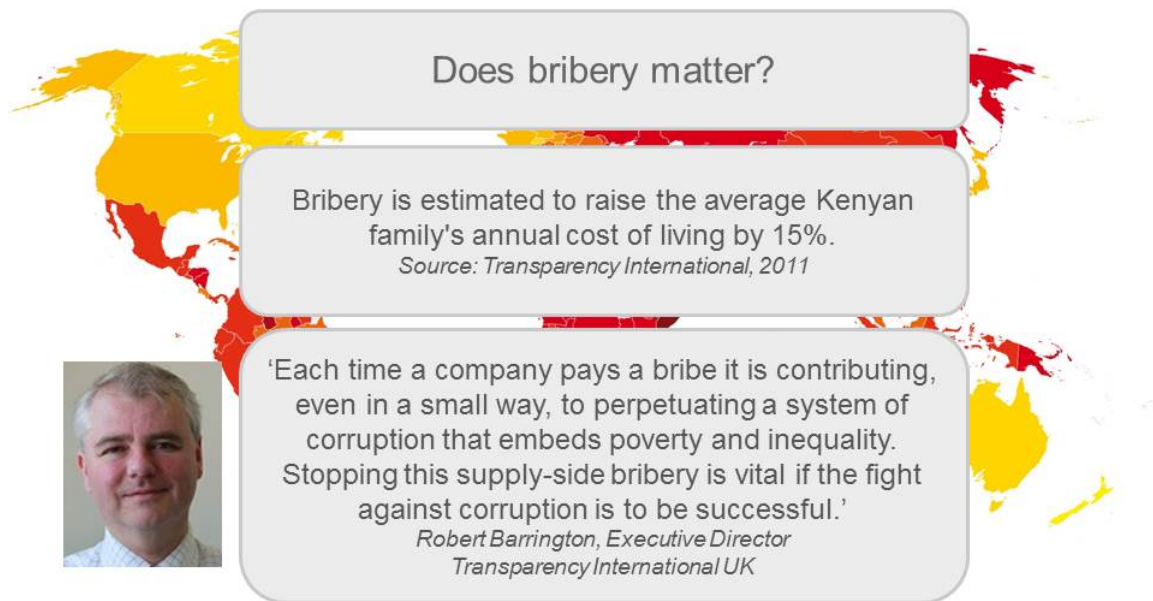
"April 8, 2004—More than \$1 trillion dollars (US\$1,000 billion) is paid in bribes each year, according to on-going research at the World Bank Institute (WBI).

Daniel Kaufmann, the Institute's Director for Governance, says this US\$1 trillion figure is an estimate of actual bribes paid worldwide in both rich and developing countries.

'It is important to emphasize that this is not simply a developing country problem,' Kaufmann says, 'Fighting corruption is a global challenge.'


The \$1 trillion figure, calculated using 2001-02 economic data, compares with an estimated size of the world economy at that time of just over US\$30 trillion, Kaufmann says, and does not include embezzlement of public funds or theft of public assets."

## Why countering bribery matters



**Does bribery matter?**

Bribery is estimated to raise the average Kenyan family's annual cost of living by 15%.  
*Source: Transparency International, 2011*



'Each time a company pays a bribe it is contributing, even in a small way, to perpetuating a system of corruption that embeds poverty and inequality. Stopping this supply-side bribery is vital if the fight against corruption is to be successful.'  
*Robert Barrington, Executive Director  
Transparency International UK*

## Trainer's notes:

In recent years, there has been increasing research into the impact of corruption.

It has become clear that corruption is not a victimless crime. These statistics from Kenya illustrate how demands for bribes affect individual families – often the poorest of the poor.

Bribery is a two-way transaction – it requires both a bribe-payer and a bribe-taker. That is why so much emphasis is placed on stopping people and companies paying bribes, even if they appear relatively small. If you cut off the supply-side of bribery, you can start to solve the problem of corruption.

Here are some more statistics:

83% of all deaths from building collapse in earthquakes over the past 30 years occurred in countries that are anomalously corrupt.

[Source: Nature magazine, 12 January 2011]

Corruption has increased the cost of attaining the Millennium Development Goals on water and sanitation by more than US\$48 billion..that's half of annual global aid outlay.

[source: Transparency International, 2010]

## What is bribery?

### Where does bribery happen?

Bribery affects all countries - some of the larger scandals recently have taken place not in the developing world but in developed countries.

'Corruption is everywhere; it's in the south, the north, east and west, and the public and private sectors. So the question is: how do you cut through and make real change.'

*George Kell, Executive Director, UN Global Compact, June 2009*

## Trainer's notes:

Bribery is a key risk for companies worldwide. There are many countries and circumstances in which a company may encounter a request for a bribe.

The incidence of companies losing business to unethical competitors is on the rise, with 44% of compliance professionals suspecting they have lost contracts to unethical competitors..

[Source: Dow Jones, 2012]

It is not a reasonable excuse to say 'that is how they do it in other countries, so that is how I will operate over there'. Most ordinary citizens, all over over the world, detest corruption when they encounter it. They know very well how badly it affects their lives.

*What keeps me awake isn't the prospect of deliberate corruption, it is the fear of inadvertent, naïve errors – the sort which arise from unthinking submission to local custom.'*

Neil Holt, Director, CH2M Hill; board member, Transparency International UK



## What is bribery?

### Definitions of bribery

Bribery is the offering, giving, receiving, or soliciting of any item of value or an advantage to another person to induce that person to improperly perform a relevant function or activity, or to reward them for improper performance.

*The Business Principles for Countering Bribery*  
(Transparency International, Berlin 2009)

Inducements can take the form of gifts, loans, fees, rewards or other advantages (taxes, services, donations, etc.)

*The Anti-Corruption Plain Language Guide*  
(Transparency International, Berlin 2009)



## Trainer's notes:

Let's start by defining what bribery is. A bribe is two way – it can be given or received.

Many definitions talk about giving or taking an 'advantage' or 'inducement' in order to perform a function 'improperly'.

The 2010 UK Bribery Act uses this language:

- A person is guilty of bribing where the person offers, promises or gives a financial or other advantage to another person, intends the advantage (i) to induce a person to perform improperly a relevant function or activity, or (ii) to reward a person for the improper performance of such a function or activity.
- A person is guilty of being bribed if the person requests, agrees to receive or accepts a financial or other advantage intending that, in consequence, a relevant function or activity should be performed improperly.

## What is bribery?

Bribery takes many forms

Bribes are not only about money exchanged in brown envelopes or wired to secret accounts. A bribe can be anything of value to the person being bribed, such as a holiday for a purchasing manager disguised as a business trip.

## What is bribery?

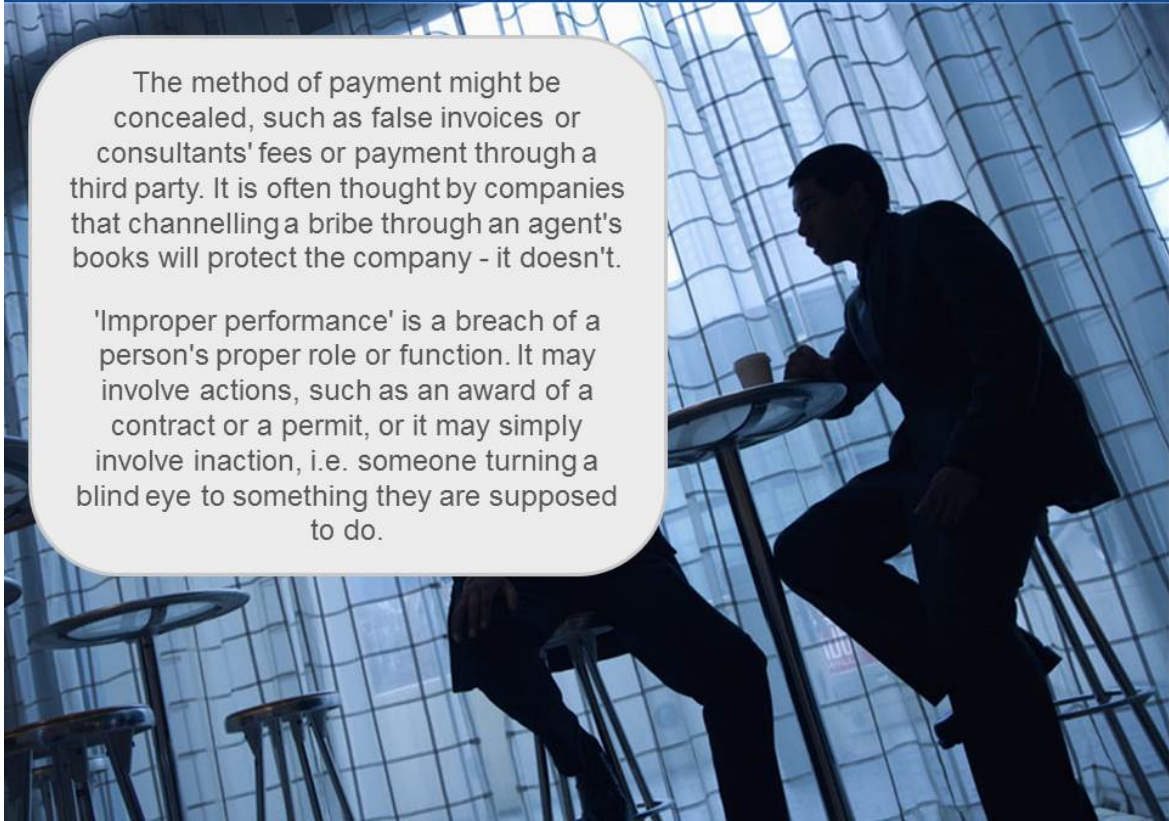
The thing of value can be disguised as a gift, hospitality or travel expenses, or it can be a payment to an intermediary - these are red-flag areas for bribery.



## What is bribery?

The method of payment might be concealed, such as false invoices or consultants' fees or payment through a third party. It is often thought by companies that channelling a bribe through an agent's books will protect the company - it doesn't.

'Improper performance' is a breach of a person's proper role or function. It may involve actions, such as an award of a contract or a permit, or it may simply involve inaction, i.e. someone turning a blind eye to something they are supposed to do.



## What is bribery?

Bribery via agents is common.

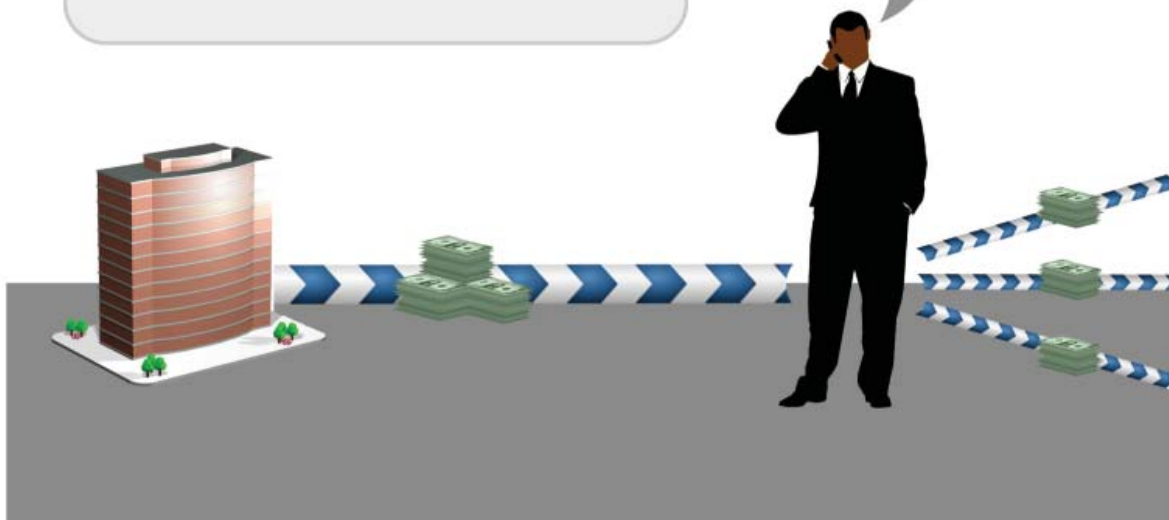
A company can be prosecuted even if the bribe was paid by an agent rather than its own officers...



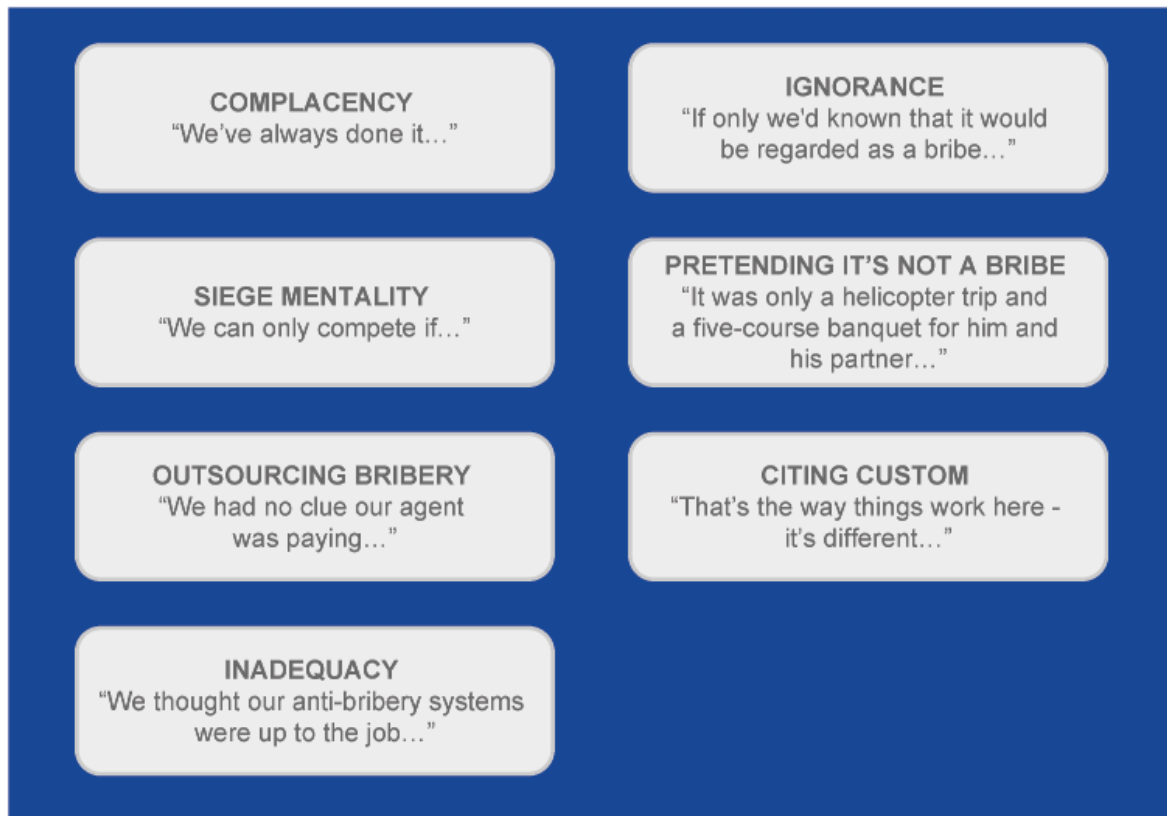
## What is bribery?

...and even if the company itself had no knowledge that the agent was offering the bribe

Leave the final negotiations to me, you don't need to know...



## Common excuses



## Trainer's notes:

People find a variety of excuses for justifying bribes. None of these represent good business practice or provide any defence under the law.

One exception is if the payment is genuinely owing to extortion or duress that threatens an individual's personal safety. Such a payment is unlikely to be deemed as bribery.

All areas of the world are affected by bribery, although it is prevalent in certain countries more than others. Don't be misguided by justifications such as local custom; bribery is a crime that is prohibited by law in every country.

## How bribes are paid



## Trainer's notes:

Patterns of bribery can vary considerably from one country to another. Although there are some common forms of bribery, bribes are demanded and paid in different ways throughout the world.

Most anti-bribery laws and prosecutors are sophisticated enough to see through attempts to disguise bribery. For instance, the UK Bribery Act covers a company's 'Associated Persons'. This is a deliberately wide-ranging phrase that can encompass employees, agents, suppliers, contractors, re-sellers and others.



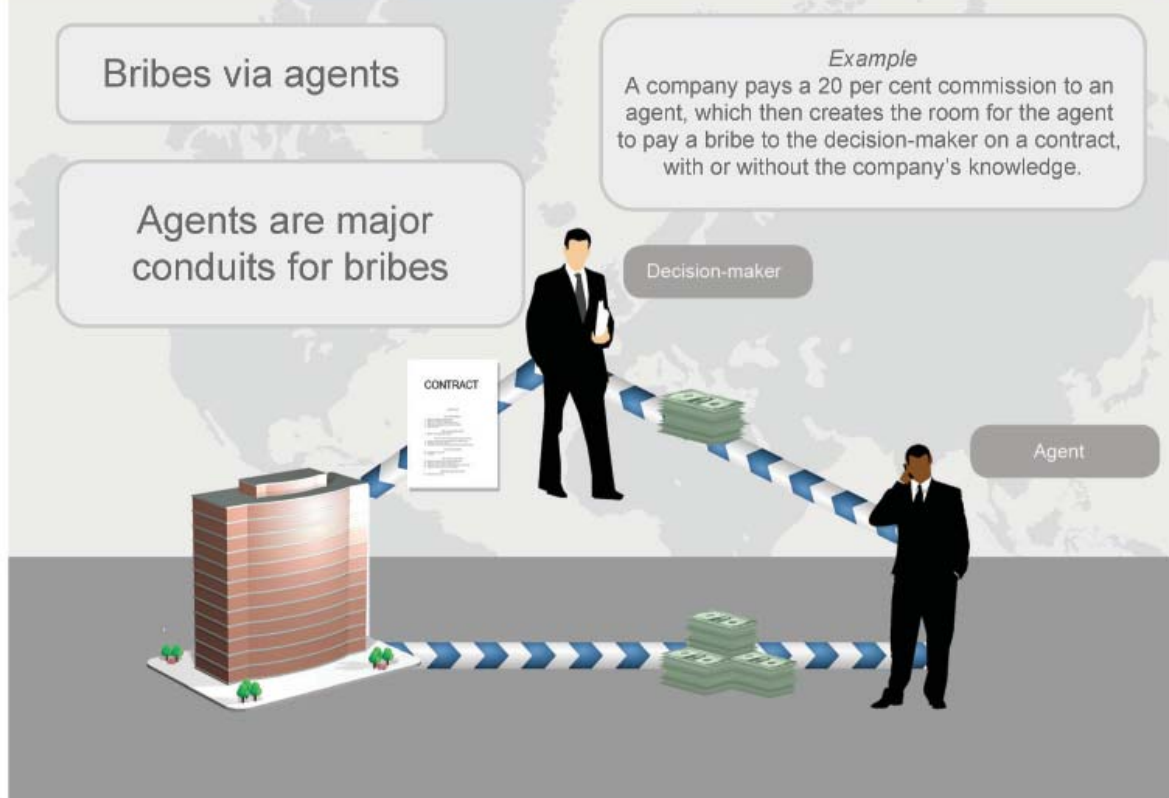
## How bribes are paid

### Bribes via agents

Agents are major conduits for bribes

#### Example

A company pays a 20 per cent commission to an agent, which then creates the room for the agent to pay a bribe to the decision-maker on a contract, with or without the company's knowledge.



## How bribes are paid

Hospitality or travel expenses may be another route for bribery

#### Example

The company pays for the decision maker on a contract, perhaps with his or her family, to go on a lavish holiday described as a training course. Or the company may entertain a buyer frequently and excessively with the aim of grooming the buyer for more substantial bribery.



## How bribes are paid

Even charitable donations can be used to disguise bribes.

### Example

A company contributes to the building of a school, which is hailed as a charitable act, but part of the funds are channelled to the decision maker.



## How bribes are paid

Nepotism or cronyism can also be used to bribe

### Example

The company hires a relative or friend of the decision-maker in return for receiving a favour.





## How bribes are paid

Bribes can be given to facilitate or speed up the performance of legitimate actions

*Example:* Small payments are made to speed up planning permissions, utility connections, provision of security, release of goods from customs, obtaining visas etc. The amounts, called facilitation payments, may be small, but they result in corrupting public services.



## Trainer's notes:

A facilitation payment, or a grease payment, is a bribe designed to give you access to, or speed up receipt of, something you are entitled to anyway, e.g. payments made for police guard, to speed up getting goods through ports/ customs, to get the electricity switched on and so on.

Some people argue that facilitation payments are harmless and should not be classified as bribes but this is not true. They are bribes and paying them helps to perpetuate a culture of bribery and corruption within the country concerned. Since they are bribes, they are illegal.

Facilitation payments are illegal under the UK's Bribery Act and in many other countries. Under US law, small facilitation payments are permitted if the purpose of the payments is to expedite or secure the performance of a "routine governmental function" - something the company is entitled to receive anyway. However, this is a very narrow exception. If the activity involves the exercise of any official discretion, or the amount involved is large (say over \$100), then the exception may not apply. A company that pays serial facilitation payments without attempting to stop them may also breach US law.

### Watching out for red flags

It is important to remember that there are common red flags for bribery which you can watch out for

Exercise: how many red flags can you list?

## Trainer's notes:

### Exercise: how many red flags can the group list?

The Serious Fraud Office (SFO) in the UK has published a list of bribery indicators, on which these are based:

#### Agents and consultants

1. Agent's fees are paid in cash;
2. The fee payments are made in a country different to where the activity takes place, in particular one of the off-shore financial centres known to be used to launder money;
3. There is no apparent business case for use of an agent; Extensive use of consultancy services without apparent value received;
4. Pressure exerted for payments to be made urgently or ahead of schedule;
5. Payments being made through a third-party country, e.g. goods or services supplied to country 'A' but payment made to shell company in country 'B';
6. Fees are split into multiple accounts for the same agent, often in different jurisdictions.

#### Marketing

1. Exceptional sales achievements in a market where competitors are known to bribe;
2. Tender documents use specifications favourable to the company's products;
3. Frequent hospitality and travel for public procurement officials
4. Requests for special favours such as donations or sponsorship related to favourite causes of the procurement officer.

#### Purchasing and contracting

1. Private meetings with public contractors or companies hoping to tender for contracts;
2. Lavish hospitality and gifts being received;
3. Closeness to suppliers such as taking holidays with them; Individual never takes time off, even if ill, or holidays, or insists on dealing with specific contractors him/herself; Making unexpected or illogical decisions on accepting projects or contracts;
4. Breaching the decision process, controls or delegated powers in awarding a contract;
5. Awarding contracts unfavourable to the organisation, either with terms or time period;
6. Unexplained preference for certain contractors; Avoidance of independent checks on tendering or contracting processes;
7. Raising barriers around specific roles or departments which are key in the tendering/contracting process; Excessive number of rush orders or contract variations;
8. Lack of documentation of key meetings and decisions.

You are the manager:  
What do you do?



## Trainer's notes:

In this section members of the group being trained will assume the position of a country manager for a company. In this capacity the group will be asked to comment on situations and approve/reject requests.

Each scenario suggests some course of action on which the trainer can ask the group to comment. The correct answer is highlighted in red.

## Hospitality - scenario 1

Reza is a top-performing salesperson in your team. He is excited about a big potential opportunity with MegaCorp. How would you respond to what he's saying?



## Trainer's notes:

### Potential courses of action

1. That's excellent timing but I'd suggest upgrading the lunch to that expensive sushi place to really impress him.
2. Nice one but you want to be careful not to alert compliance or internal audit; book it as a meeting with another client.
- 3. Cancel the lunch but see if the procurement officer still wants to meet in his office or ours to discuss current work.**
4. Go ahead, but make sure you don't go over our hospitality spending limits - we need to be extra vigilant about bribery in this situation.

### Explanation

The right course of action for Reza is to cancel the lunch, explaining that she is prevented from entertaining during the tender period. Reza could suggest it would be worthwhile meeting anyway - with no hospitality involved - to discuss progress on existing contracts.



Some months ago you asked a distributor for a neighbouring country that you oversee to show around a key customer, who was travelling in that country over a weekend. After a long delay, he's finally submitted an invoice for the expense. It is for 6,000 dollars, and the transaction is described as "refund of Distributor's sales promotion expenses". No further details are given. He's calling to chase it up. How would you respond to him?

### Trainer's notes:

#### Potential courses of action

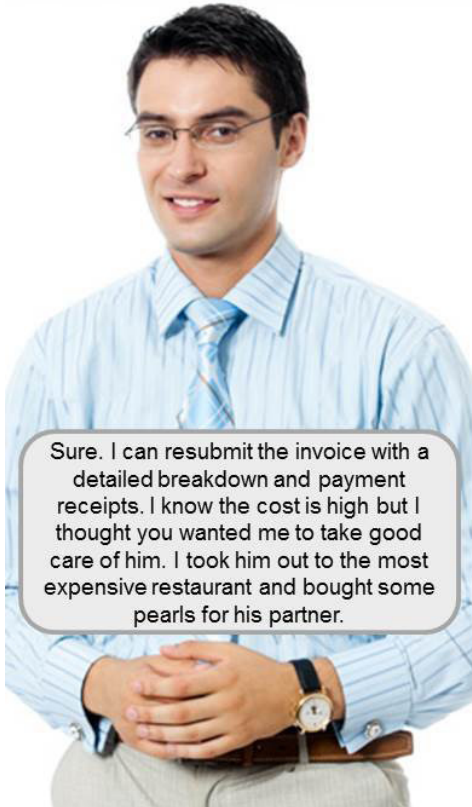
##### 1. Could you give me a breakdown of your costs?

2. Yes, I've got the invoice. I'll get accounts payable to process it asap.

3. Certainly, I'll get it paid today. You did well. We've done some more business with that customer. I'll keep you in mind if something like this comes up again.

#### Explanation

This is a large cost for just showing a person around and could involve a bribe. So, at a minimum, you must ask for and review the details of expenditure and record these so they are available in the case of an audit.



Sure. I can resubmit the invoice with a detailed breakdown and payment receipts. I know the cost is high but I thought you wanted me to take good care of him. I took him out to the most expensive restaurant and bought some pearls for his partner.

The distributor is recounting items that include rather lavish entertainment and gifts. What would you do now?

## Trainer's notes:

### Potential courses of action

- 1. Inform your management or legal department about the incident and get advice as to how to proceed.**
2. Tell the distributor to leave the invoice as is to mask the problem.
3. Tell the distributor that he overstepped his mandate and must bear some of these costs himself.

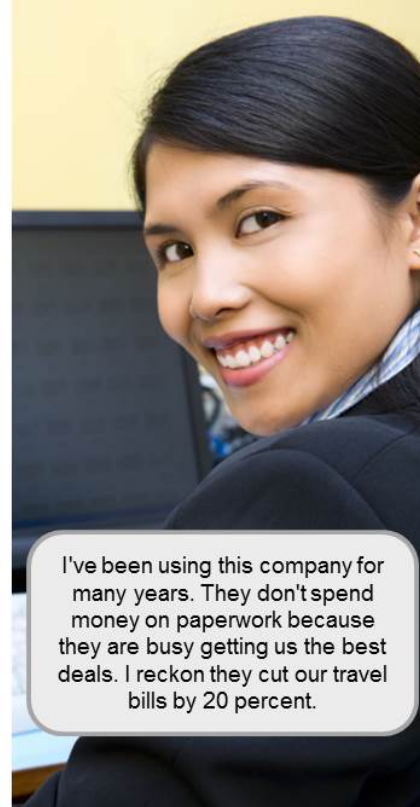
### Explanation

The distributor has done things that may lead to a bribery risk for you and your company. To avoid this, it is necessary to have clear policies and budgetary rules that all employees understand. If you detect problems with expenses (e.g. cash payments, lavish entertaining, unusual hotel bookings, large gifts), you should report them internally through the correct channels, such as your legal or compliance department. Remedies may include asking the customer for reimbursement and instructing, controlling and monitoring intermediaries more carefully in the future. This may include reviewing the anti-bribery procedures and remedying any weaknesses, including putting in place processes for pre-approval of certain expenses. Tip: Head off trouble before it happens. In this scenario, the distributor has done things which may give you or your company a bribery problem. To prevent this problem, you should have clear policies and budgetary rules that your employees need to understand.



## Commissions to third parties

Kosum (pictured here) manages a team of field sales people in the company. To organise her team's travel, she uses a company whose invoices are quite generic and do not record enough detail. This is what Kosum is saying when questioned. How would you respond?



I've been using this company for many years. They don't spend money on paperwork because they are busy getting us the best deals. I reckon they cut our travel bills by 20 percent.

## Trainer's notes:

### Potential courses of action

1. Wow! If they are saving that much, maybe we should send more business their way.
2. That's good but do ensure that they keep getting us the best deals.
3. **That's good but we'll need to have a better description of all services provided, run a proper check and get them to sign up to our standard vendor agreement.**

### Explanation

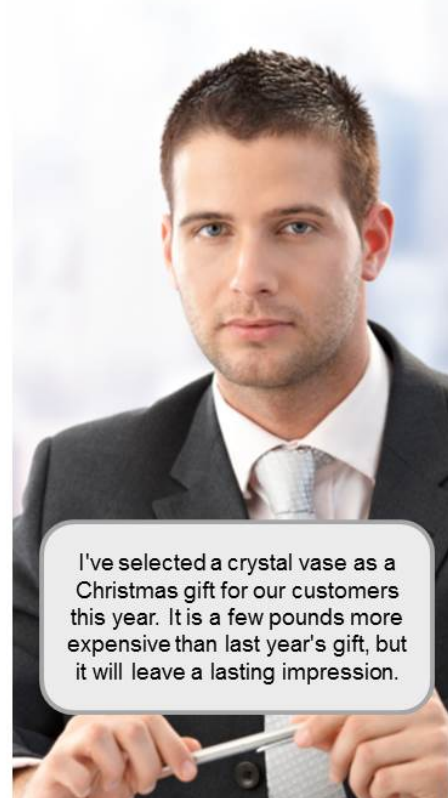
This travel company may be completely legitimate and beneficial to your company but it could also be a vehicle for paying bribes -for example, by providing free hotel bookings and flights for clients and their families.

Not having sufficient descriptions of services makes it impossible to tell if travel is legitimate or in breach of your company's policy.

If there is a legitimate reason for using this supplier, then it should be set up as an authorised supplier, incorporate anti-bribery clauses in its contract and ensure it provides accurate and detailed records of travel and services provided in future.

Even if it is a long-standing supplier, when the new contract is issued, a basic due diligence check should be undertaken to be certain that it has not been involved in bribery in the past, does not have a reputation for unethical business conduct and that there are no other red flags.

You traditionally give presents to customers at Christmas that are quite modest. Some of those customers are government officials. Your assistant has chosen a nice gift. How would you instruct him?



I've selected a crystal vase as a Christmas gift for our customers this year. It is a few pounds more expensive than last year's gift, but it will leave a lasting impression.

## Trainer's notes:

### Potential courses of action

1. Due to the risk of these gifts being seen as bribes under the new bribery law, I've decided to cancel giving gifts this year.
2. Due to the new bribery law, we should send the gifts to people's home addresses and leave out their name if possible.
3. We'll have to identify government officials and others in a position to make buying decisions in the coming months and exclude them from the list of recipients.
- 4. It is time to review our gifts policy to make sure that we meet our no-bribes policy. With new anti-bribery laws it is becoming a complex area with greater risks and perhaps we should no longer make gifts.**

### Explanation

Gifts are traditional in many countries and gifts of nominal value are usually permitted by company codes of conduct and bribery laws. However, if the gift influences a person or is capable of influencing, then it could be seen as a bribe. The best course of action is to have clear gifts policies supported by guidance and to record any gifts made or received.

Avoid making gifts of more than negligible value, whether to government officials or to those in the private sector. Promotional gifts such as low-cost diaries at New Year would be an acceptable approach.

A good test to decide whether a gift is reasonable, proportionate and bona fide is whether you would be willing to make it public. If you think this would embarrass your company or cause other concerns, then don't do it.



## Charitable donations

Janice is involved in a bid for a new government contract. Part-way through the negotiations, she has been asked by a government minister to make a charitable donation.



## Trainer's notes:

### Potential courses of action

1. Sure. Let's charge this to our marketing budget.
2. Yes, let's go ahead with it immediately. We can give the money from our discretionary budget.
- 3. Is this minister in a position to make a decision about our company? If she is, we shouldn't make this donation.**
4. Yes, it's a good idea. Could you give the money from your personal account, Janice? We will ensure that you get an equivalent amount as a bonus next month.

### Explanation

Charitable donations are generally a good thing but charities can be corrupt too, or act as vehicles for corruption. Make sure you do due diligence on any charities you intend to make a donation to.

Moreover, the donation may be perceived to be a bribe if it seems to influence the minister to award business. The best practice is to stick to your company's charitable contributions policy.

Ad hoc contributions related to marketing activities are always a potential risk and should be avoided. Even if they meet the policy and criteria, the donation should not be made if there is a current marketing situation.

If it could be seen as a bribe, then don't pay. Seek help from your legal department for any specific situation.

## Getting through the airport



### Trainer's notes:

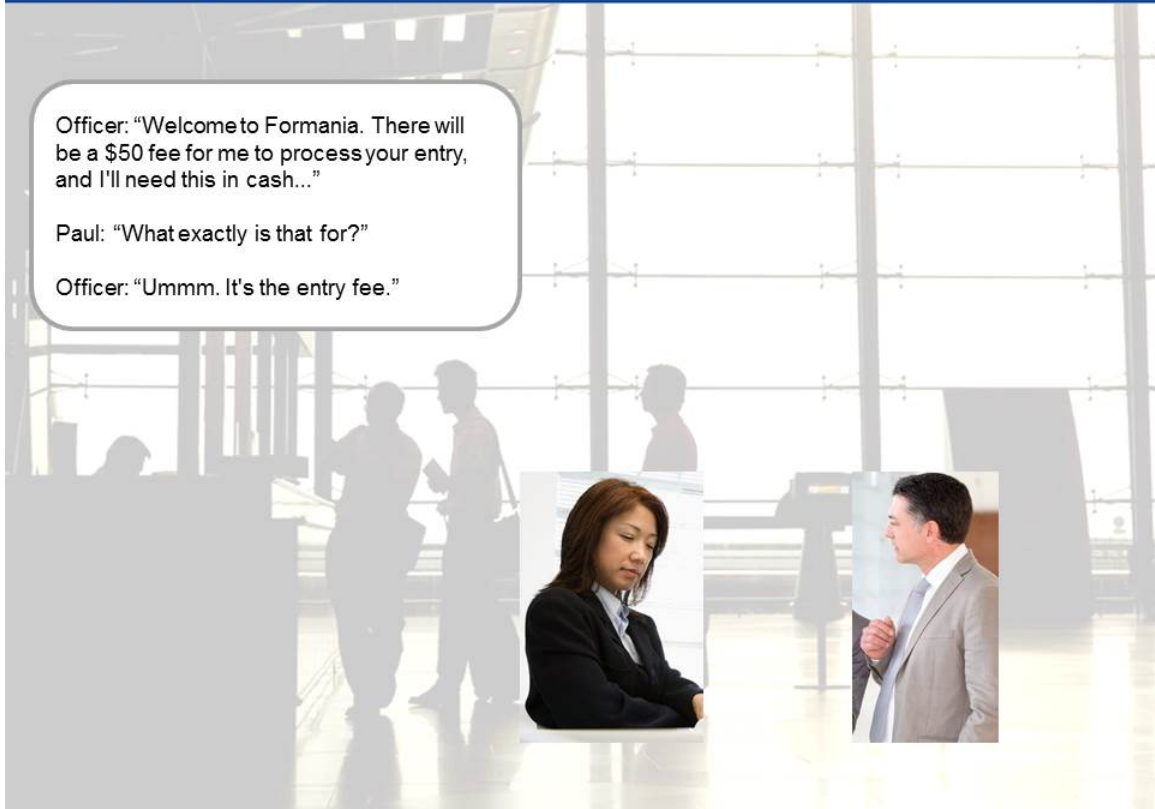
In this section you will learn how to resist demands for facilitation payments. - small cash payments to public officials to expedite or 'facilitate' actions that they are already duty-bound to perform. For this purpose we will review the case of Paul Nantes who has flown in for a business visit to Formania. Before the visit he was warned about incidents of immigration officers demanding facilitation payments and is prepared for this eventuality. Paul is aware that if he pays a bribe, he will be breaching his company's policy and breaking the law. Also, his company knows that if its personnel got a reputation for paying bribes, the company would face escalating demands. If Paul pays, he could make it more difficult for any of his colleagues to refuse in future. He remains courteous and unflustered throughout this exchange, because he knows his company will support him if he refuses to pay.

## Getting through the airport

Officer: "Welcome to Formania. There will be a \$50 fee for me to process your entry, and I'll need this in cash..."

Paul: "What exactly is that for?"

Officer: "Ummm. It's the entry fee."



## Trainer's notes:

### Learning point

Paul has received bribery training and is aware of this risk. He correctly challenges the officer's request. Many companies will produce guidance on the methods corrupt officials will employ and counter measures to use. Some companies may also have 24-hour hotlines for those who need advice.

## Getting through the airport

Paul: "Really? Could you show me where the requirement for the 'entry fee' is displayed?"

Officer: "Well we don't have this notice on display today."

Paul: "In that case I can't pay the fee."

Officer: "What's your problem? Everyone else is paying the fee."

Paul: "Well, the problem is that my company's policies require that I ensure the payment I make is legitimate. Paying such a 'fee' could break the law and I could be prosecuted for that."

Officer: "Sorry, but if you'd like to pass you have to pay the fee."

Paul: "OK. Can I please see your supervisor?"



## Trainer's notes:

### Learning point

Ask the immigration official where the requirement for the 'entry fee' is displayed.

### Learning point

Refuse to pay if the official cannot supply official validity for the 'entry fee'.

### Learning point

Make the point that paying such a 'fee' would be against your home country law and that you would be subject to company and legal actions on return to your home country.

### Learning point

If the official still demands the payment, ask to see the official's supervisor.

## Getting through the airport

Officer: "I'm afraid that's not possible. My boss only sees VIPs. In any case if you don't pay the fee, you will need to turn back."

Paul: "I see. Can you give me a receipt for the fee?"

Officer: "What? We don't issue receipts for any payment."

Paul: "But I have to get receipts for any payments that I make on business."

Officer: "I don't want to argue on this point. I have to reject your entry."

Paul: "OK. In that case I will need to phone my embassy to ask for advice."



## Trainer's notes:

### Learning point

If the request to see a supervisor is refused, or if the supervisor also asks for payment, you may be running out of options but you can still stubbornly stand your ground. There may be no option. You could also try asking to be given an official receipt and for the immigration official's name and relevant identification number.

### Learning point

If the official refuses to provide a receipt, restate willingness to pay the fee but not without a receipt.

### Learning point

If no receipt is forthcoming then the employee should telephone the local embassy and make clear to the official he is doing so and will wait as long as necessary until he is given entry. This means people always need to travel with the local embassy/consulate telephone number.

## Getting through the airport

Paul: "I have phoned my embassy and they have told me that I need to take your name and position so that I can make a proper record of this payment."

Officer: "No you may not. And you are wasting my time. I have other passengers to look after. I'm going to reject your entry unless you pay me right now."

Paul: "Ok then, here's the \$50. I'm not happy to pay this and will have to pursue the matter further."



## Trainer's notes:

### Learning point

Paul has now used a number of techniques to refuse the demand for a bribe:

- Asking the Officer for proof the demand is official
- Refusing to pay when he thinks it is a bribe
- Stating it would be illegal to pay
- Asking the Officer for documentation of the payment
- Referring to his local embassy
- Asking for the Officer's details.

In doing so, he has clearly demonstrated that he knows he is being asked for a bribe and is unwilling to pay. At any one of these points, the Officer might have stopped making the demand and waved Paul through. This scenario continues by assuming Paul pays the \$50, in order to illustrate what he should do next.

### Learning point

Although this scenario was based at an airport immigration desk, the lessons on how to resist demands for bribes in the form of facilitation/grease payments that it illustrates apply equally to other situations in which you may face such demands. Paul tried several techniques to avoid the demand for the payment. At any one of these, the Officer may have decided that he had enough and waved Paul through. 'Even though this scenario assumes that Paul decided to make the facilitation payment, he had clearly shown that he knew he was being asked for a bribe and was unwilling to pay. The Officer may feel it is too much trouble in future to make a demand of Paul or colleagues who take the same approach.

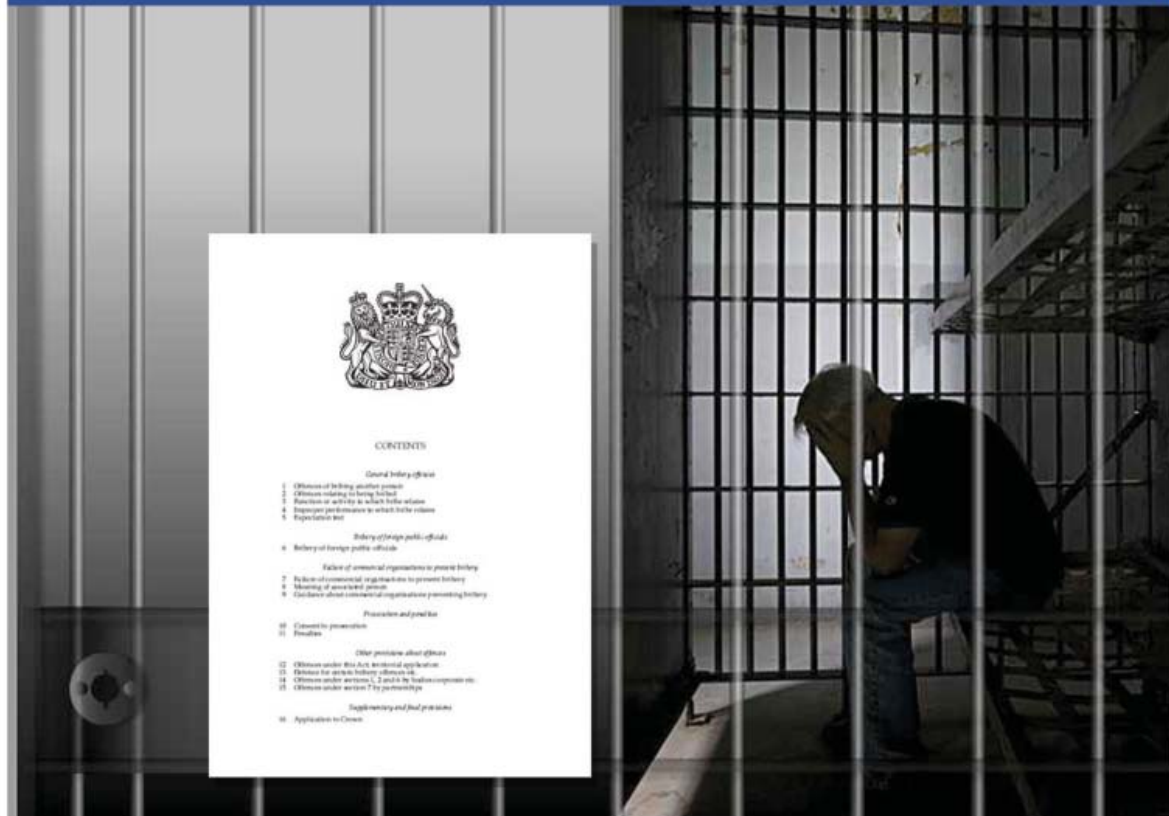


## Getting through the airport

When he has passed through the airport, Paul should do three things.

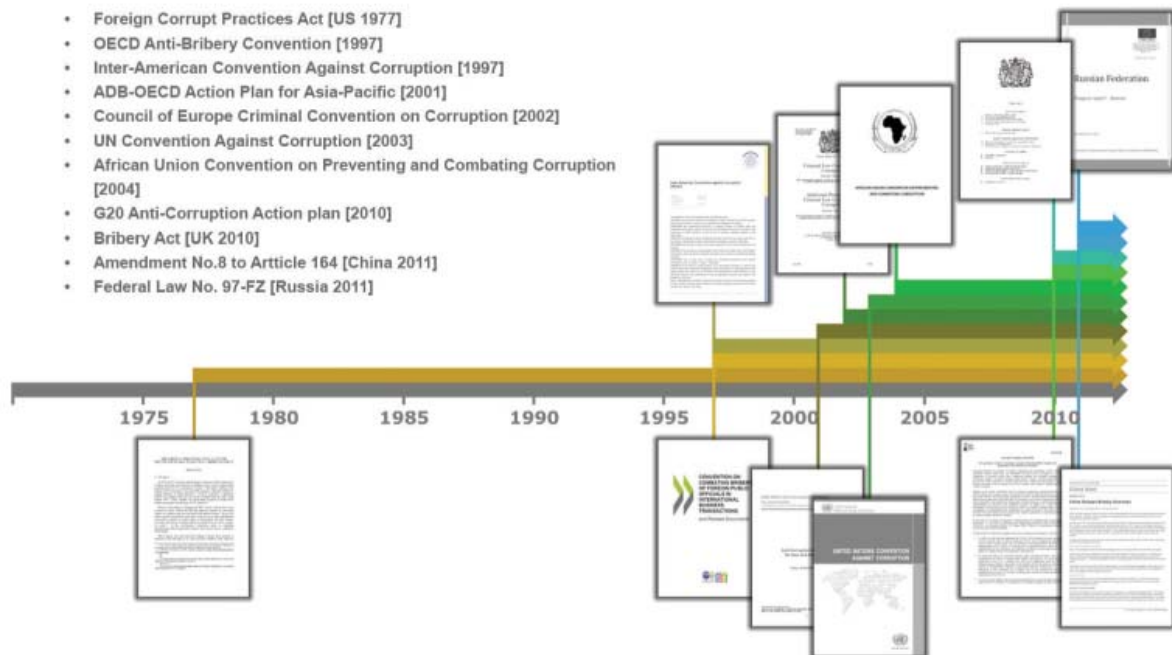
- Give full details of the incident to his company, so that they can try to avoid this situation in future - for example, by joining with other companies that are being harassed in this way, and using the local embassy or consulate to intervene with the local authorities.
- Consider reporting the incident to the local embassy or consulate and ask his local managers to raise it in local business forums to see if other companies are experiencing the same problem.
- The company should consider reporting the incident to the relevant local authorities.







### Legal framework: cutting off the supply-side



### Trainer's notes:

Since the 1997 OECD Convention, a global legal framework of national and international law has been put into place to fight bribery.

The United Nations Convention Against Corruption (UNCAC) has established broad global principles that accept that bribe-paying is wrong. It has been ratified by 140 countries.

The FCPA stands out as the grandfather of anti-bribery laws but recently, several other countries, including the UK and China, have introduced or updated laws that are compliant with UNCAC and the OECD Convention.

With anti-bribery laws becoming ever stricter and having greater reach, the corrupt ways in which some business transactions have been done in the past will need to change.

### UK BRIBERY ACT

- Came into force on 1<sup>st</sup> July 2011
- Widely regarded as a strict law
- Covers bribe-paying anywhere in the world
- Covers bribes of any size
- Applies to
  - anyone living in or 'closely associated with' the UK
  - any company 'carrying out business' in the UK
- Several tiers of liability:
  - Personal liability
  - Corporate liability
  - Director & Officer liability

## Trainer's notes:

### The UK Bribery Act 2010

The Bribery Act introduces four new offences:

- the offering, promising or giving of an advantage with the intent to induce a person to act improperly
- requesting or agreeing to receive the acceptance of an advantage to perform a function improperly
- a discrete offence of bribery of a foreign public official
- a new offence of failure by a commercial organisation to prevent a bribe being paid for or on its behalf (it is a defence if the organisation has 'adequate procedures in place to prevent bribery').

Directors and senior officers of a company are also personally liable if they 'consent or connive' in bribery – i.e. they know it is happening or turn a blind eye.

Companies can be liable if an 'associated person' pays a bribe, even if the company did not know or approve of the bribe-paying. The penalty is up to ten years' imprisonment and unlimited fines.

### THE FOREIGN CORRUPT PRACTICES ACT

- Was enacted in 1977
- First national law to criminalise payment of bribes to foreign government officials
- Two basic provisions:
  - Anti-Bribery provision
  - Accounting provision
- Imposes liability on senior officers for a corporation's failure to create and implement appropriate anti-corruption controls
- Provides for both civil and criminal penalties for companies and individuals

## Trainer's notes:

### Anti-bribery provision

The Anti-bribery provision makes it a crime for any US person or company to directly or indirectly pay or promise anything of value to any foreign official to obtain or retain any improper advantage. It applies to three categories of individuals and entities:

- "Issuers" and their officers, directors, employees, agents and shareholders;
- "Domestic concerns" and their officers, directors, employees, agents and shareholders; and
- Others acting while in the United States territory.

### Accounting provision

The Accounting provision is applicable to public companies and consists of two major components:

- The book and records provision - make and keep books, records and accounts, which in reasonable detail, accurately reflect the transactions and disposition of assets
- The internal control provisions - requires public companies to devise and maintain a system of internal accounting controls sufficient to provide reasonable assurance that transactions are recorded appropriately and in accordance with rules and regulations.

## Bribery and the law: extra-territoriality

In the UK and in some other jurisdictions, the anti-bribery legislation now applies extra-territorially, i.e. outside the home country. For instance, a UK company can be prosecuted by the UK authorities for paying bribes anywhere in the world.



## Bribery and the law: extra-territoriality

Similarly, a foreign company carrying out business in the UK can be prosecuted by the UK authorities for bribes paid anywhere in the world.



### COMMON FEATURES OF ANTI-BRIBERY LAWS

- Bribery laws often seek to punish both bribe givers and takers. Common features of anti-bribery laws are:
  - **Extra-territoriality**
  - **Criminal offence**
  - **Foreign public officials**
  - **Penalties for individuals**
  - **Corporate liability**

## Trainer's notes:

**Extra-territorial** – you can be prosecuted in your home country or a third country such as the US for bribes paid anywhere in the world.

**Criminal offence** – international pressure has strongly increased to make bribery a criminal offence and to encourage prosecution of offenders.

**Foreign public officials** – most laws make a special reference to bribes paid to overseas public officials as transaction involving such public officials are regarded as high-risk. However, bribery within the private sector is increasing, and more recent anti-bribery laws reflect this.

**Penalties for individuals** – penalties range from heavy fines to imprisonment and the death sentence.

**Corporate liability** – companies are increasingly being held liable for bribes paid by their employees and agents – and the fines and associated costs are growing.

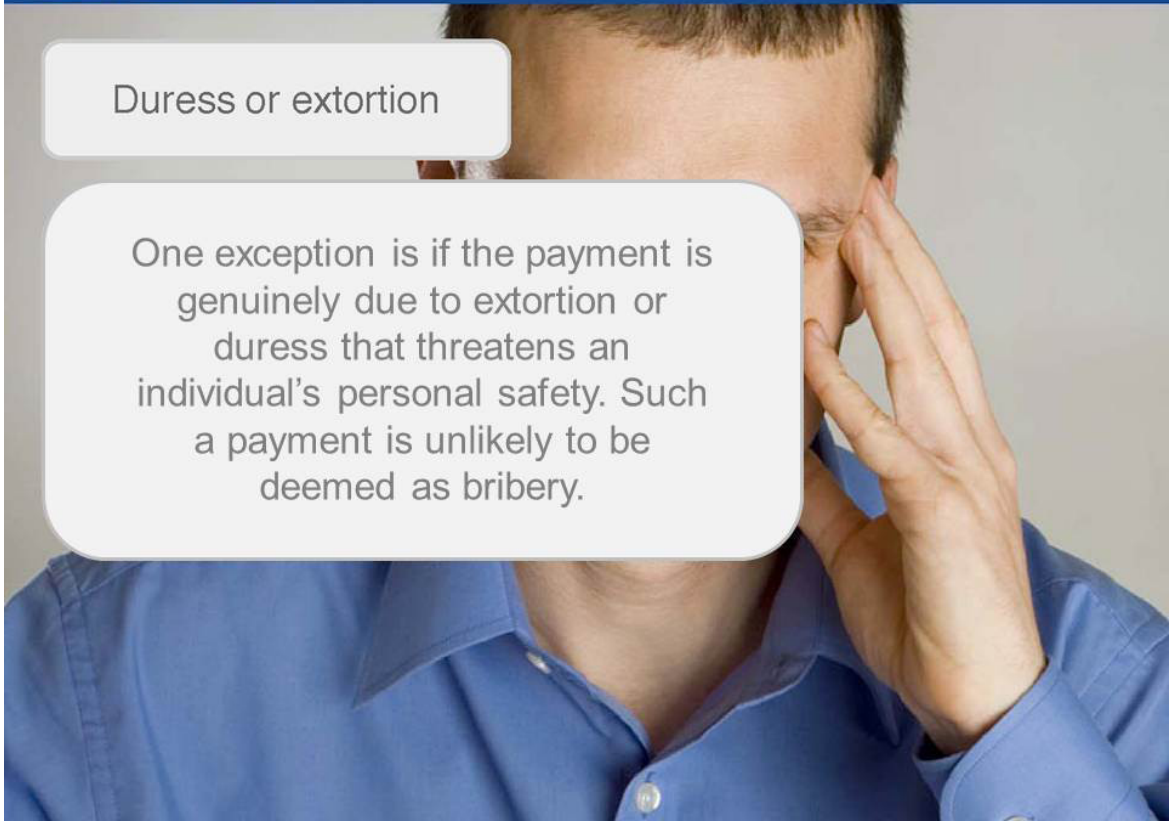
### What is a Foreign Public Official?

Foreign public officials have been involved in many of the bribery cases to date, and so are specifically referenced in many anti-bribery laws. Recently, bribery within the private sector has also increased significantly, and this is covered in more recent laws. Definitions of a foreign public official can mean anyone employed by the state – this can include

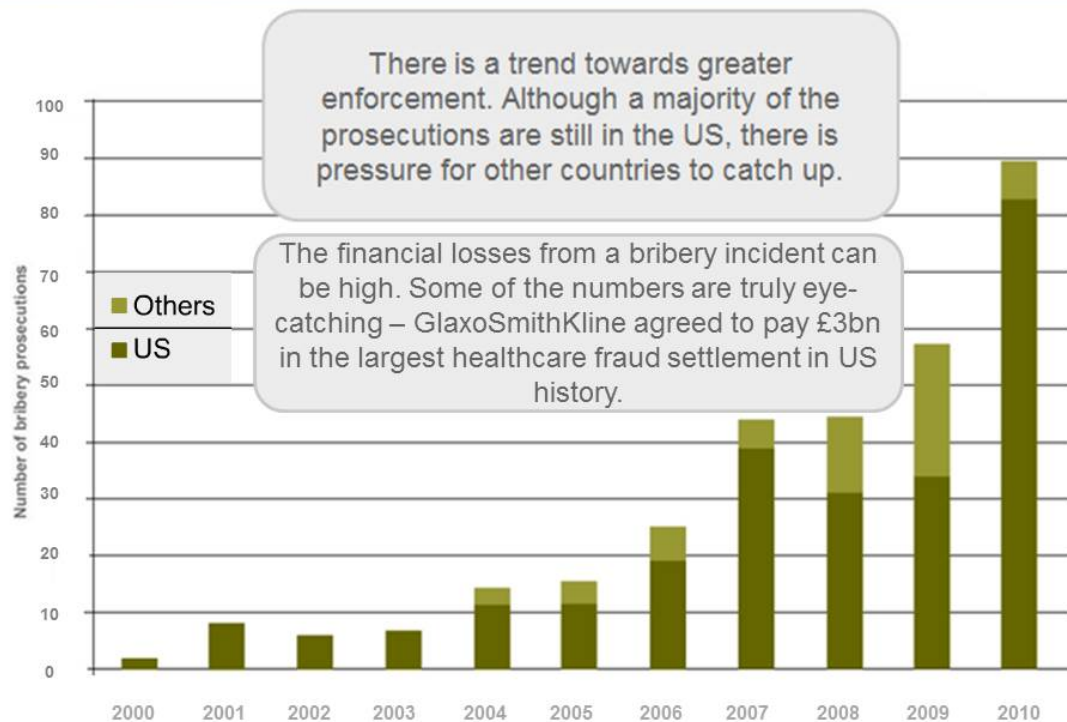
- Civil servants
- Local government officials
- Government ministers
- Health officials including medical staff
- Customs officials
- A judge
- A member of parliament
- Employees of state-owned companies.

Duress or extortion

One exception is if the payment is genuinely due to extortion or duress that threatens an individual's personal safety. Such a payment is unlikely to be deemed as bribery.



## Bribery and the law



## Trainer's notes:

### **GlaxoSmithKline agrees to pay \$3bn in the largest healthcare fraud settlement in US history**

July 2012

GlaxoSmithKline (GSK), one of the world's largest healthcare and pharmaceuticals companies, agreed to pay \$3 billion to the US authorities as a settlement for a series of crimes and compliance breaches. This included excessive hospitality offered to doctors in order to promote GSK products.

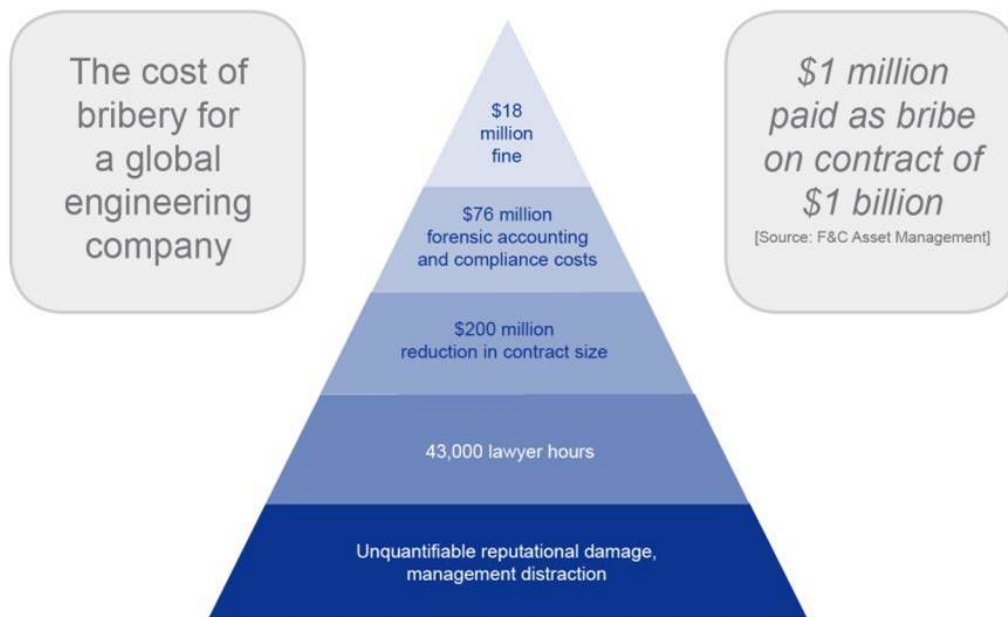
The company also admitted to engaging in a process known as off-label marketing in which anti-depressant drugs such as Paxil and Wellbutrin were marketed for unapproved uses like treatment of adolescents.

The settlement of \$3 billion was at the time the largest such settlement in US history.

And then there are personal penalties against perpetrators. Since bribery is a criminal offence, this can mean imprisonment...



## Common excuses



## Trainer's notes:

This slide illustrates how the costs of enforcement are usually far greater than the fines. In fact, the fines can be dwarfed by the cost of compliance, including both external investigators and internal compliance.

There can also be personal costs.

### **Broker jailed for 21 months**

October 2010, UK

Julian Messent, 50, the former CEO at reinsurance broker PWS Insurance, has been jailed for 21 months after admitting to paying bribes totalling £1.2 million to officials in Costa Rica when he was a director of the company's international property division there. The sentencing judge said that his offences justified a four-to five-year prison sentence, but this was reduced to 21 months upon taking into account his early guilty plea and good character. Mr Messent was also asked to pay £100,000 compensation to the government of Costa Rica and was disqualified from being a company director for five years. It has been suggested that PWS Insurance went into bankruptcy partly as a result of the bribery scandal.



## Reporting bribery

### REPORTING INTERNALLY

If you suspect or know you are being asked to pay, or offered, a bribe, you must report it to the company management.

If you wish to report anonymously, for example, if you suspect your manager of paying bribes, you should use your company's confidential reporting mechanism such as a 'whistleblower hotline'.

If you have paid a bribe or know that someone else has paid a bribe, of any size, you **MUST** report it to your manager and the company's legal department.



For instance, in the UK the Serious Fraud Office operates a confidential anti-corruption hotline (see [www.sfo.gov.uk](http://www.sfo.gov.uk) for details)

## Reporting bribery

### REPORTING EXTERNALLY

If you have encountered bribery, sharing the experience with other companies can help build awareness and develop collective action.

In many countries, your local embassy or consulate should be able to help by giving support and advice and, if necessary, intervening on your company's behalf.

If you know that a bribe has been paid, in the first instance you should report it internally, and your company should then report it to the relevant authorities. For instance, in the UK, the Serious Fraud Office operates a confidential anti-corruption hotline (see [www.sfo.gov.uk](http://www.sfo.gov.uk) for details). This is a legal obligation in many countries, and failure to do so may make you personally liable under the law.



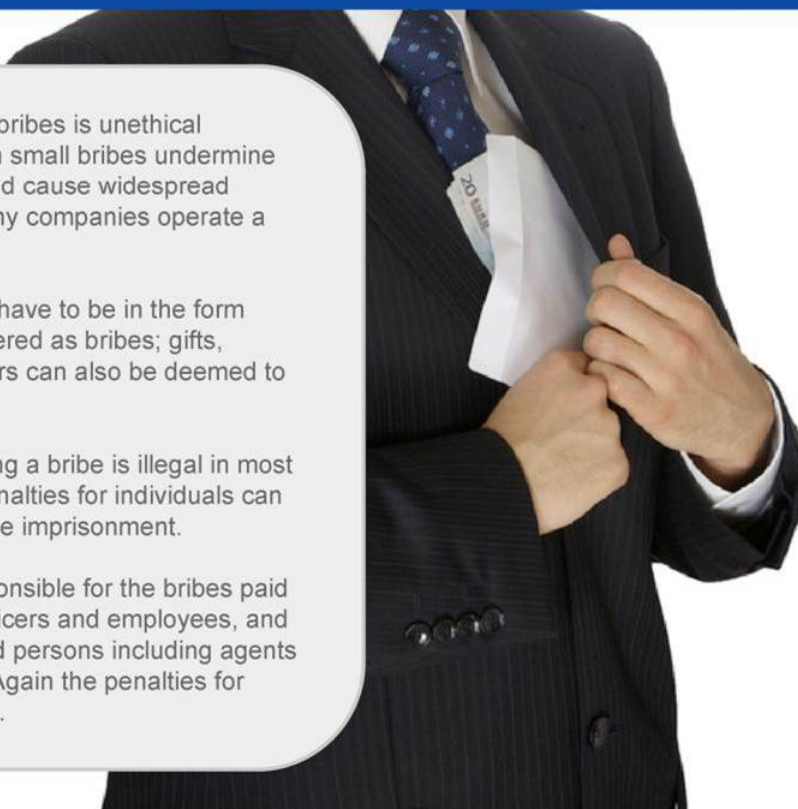
## What is bribery?

Paying or accepting bribes is unethical and also illegal; even small bribes undermine the rule of the law and cause widespread social problems. Many companies operate a no-bribes policy.

The payments don't have to be in the form of cash to be considered as bribes; gifts, hospitality and favours can also be deemed to be bribes.

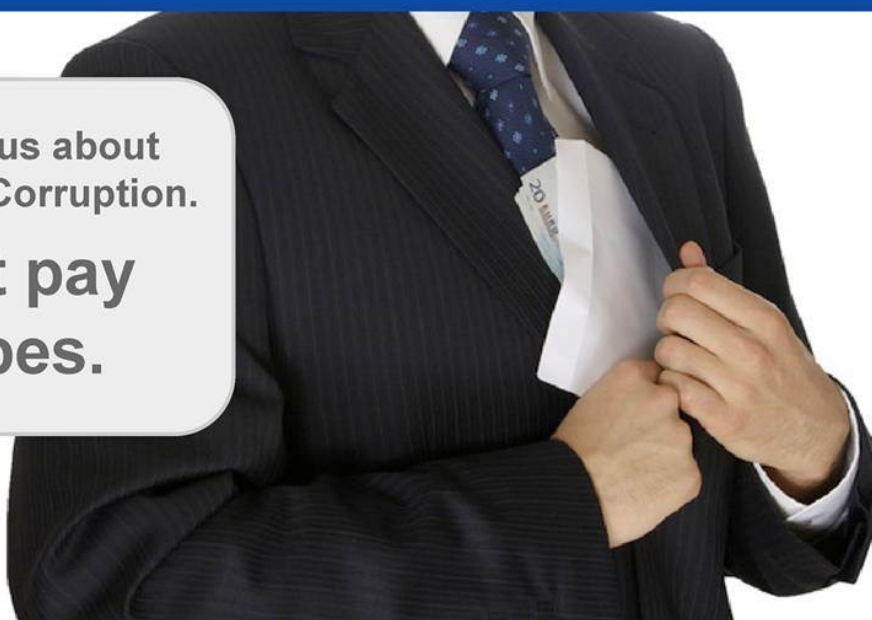
Offering or demanding a bribe is illegal in most countries and the penalties for individuals can be severe and include imprisonment.

Companies are responsible for the bribes paid on their behalf by officers and employees, and also other associated persons including agents and intermediaries. Again the penalties for violations are severe.



**Get serious about  
Bribery & Corruption.**

**Don't pay  
bribes.**



This course has been developed by:



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## Additional Guidance for Trainers

During this training course, you may find that the group has questions about certain difficult areas. Two common areas for questions are about gifts and the appointment of agents. This section is intended to give you additional guidance on these issues for use during the training session.

### Guide to sensible gift-giving

Although gift-giving is common in some countries, bribes can also often be disguised as gifts. Some companies ban all gift-giving. Other companies have a policy that allows modest gift-giving in certain circumstances. You can go through a series of tests to identify whether giving or receiving a gift is potentially a bribe:

- Made for the right reason: it should be given clearly as an act of appreciation
- No obligation: the gift does not place the recipient under any obligation
- No expectations: expectations are not created in the giver or an associate of the giver or have a higher importance attached to it by the giver than the recipient would place on such a transaction;
- Made openly: if made secretly and undocumented then the purpose will be open to question;
- Accords with stakeholder perception: the transaction would not be viewed unfavourably by stakeholders if it were made known to them;
- Reasonable value: the size of the gift is small and accords with general business practice;
- Appropriate: the nature of the gift is appropriate to the relationship and accords with general business practice;
- Legality: it is compliant with relevant laws;
- Conforms to the recipient's rules: the gift meets the rules or code of conduct of the recipient's organisation
- Infrequent: the giving or receiving of is not a frequent happening between the giver and the recipient;
- Reported: the gift should be recorded and reported to management;
- Documented: the expense is fully documented including purpose and approvals given and properly recorded in the books.

## Conducting due diligence on agents

Due diligence is a process for carrying out thorough checks to a depth appropriate to the risks. It is required at the start of the relationship and then continued on a regular basis.

### Before appointment

Look out for basic red flags, checking whether the agent:

- has faced allegations, investigations or prosecutions for involvement in corruption
- has personal links with government officials
- has been recommended by a government official
- employs apparently unqualified staff or advisers
- is resistant to formal written agreements
- refuses to allow the principal to examine books and records
- has requested payments to be made in unusual ways, e.g. split invoices or via tax havens
- appears able to bypass legal or bureaucratic hurdles more easily than others
- operates within a market or segment of the market in which business practices are prone to corruption
- has been winning orders with uncompetitive products or services.

### Enhanced or additional due diligence

Enhanced or additional due diligence may be required at any time that the circumstances change or there is a suspicion of bribery.

This might involve checking whether the agent still:

- has adequate anti-bribery policies and procedures
- has requisite skills and resources
- is a recognised consultancy or part of a company and not a sole operator
- charges fee levels or commissions that are in line with the market norm
- has the necessary expertise or track record in the products and market
- has a reputation for probity within the local market and with other clients.

## NOTES

# NOTES







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